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IN THE

Supreme Court of the United States

October Term, 1963

No. 629

JOHN E. FRANCIS, *Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA, *Respondent*

On Petition for Writ of Certiorari to the Superior Court of Pennsylvania.

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

There are no questions arising from the facts of the case which warrant review by the Supreme Court of the United States. A precise statement of the questions would make this clear but properly belongs in the Argument against the granting of the prayer of the petition.

STATEMENT OF THE CASE

The statement in the Petition and the State Courts' opinions appendixed sufficiently set out the facts. Petitioner, Deputy Commissioner of Public Property in Philadelphia, accepted gifts from a contractor who was doing business with the City for that Department, knowing that the contractor was cheating the City by taking unauthorized "short-cuts".

ARGUMENT

1. "... *the Supreme Court of the United States will overturn a felony conviction in a State Court if at the trial an involuntary confession is admitted into evidence because such a trial violates due process* (citations)." (Petition page 11.)

During the investigation petitioner was questioned by the City Controller; he asserted his innocence of wrong doing and denied receiving gifts from the contractor—there was no "confession".

The "involuntary" nature of the statement is described at page 26 of the Petition; as an employee he ran the risk of dismissal if he refused to answer questions pertaining to his employer's being cheated.

The statement was not "admitted into evidence". (See testimony quoted at page 25 of the Petition.)

2. "*One of the most fundamental principles in the administration of criminal justice is that a distinct crime cannot be given in evidence against a defendant who is being tried for another crime* (citation)." (Petition page 12.)

The Petitioner does not name the crime, for none was "given in evidence". Petitioner attempted—improperly—to convert a Commonwealth technical witness into a defense reputation witness. The nature of his testimony was such that no cross-examination was required. (No evidence was offered by the defense at trial.) Petitioner thereby introduced the subject of his work performance and his background in the Department. The witness had been questioned by investigators about the Petitioner's background during an investigation of "alleged frauds" on the City in a trade-in of City vehicles. The fact that the term "alleged frauds" was *used* did not impute misconduct to the appellant—this was quite clear at the trial. The term is waved out of context with the hope that it will produce an emotional judicial reaction.

3. *"The admission into evidence against the petitioner of records and letters without confronting the petitioner with the authors of these records and letters and without placing the author under oath and without affording the petitioner the opportunity to cross-examine them was in violation of the Due Process Clause of the Fourteenth Amendment."* (Petition pages 12, 13.)

Commonwealth Exhibits C-12, C-17, and C-18 were bills of Diner's Club Inc. and the Hotel Astor, New York City, which the contractor paid for the benefit of Petitioner. The papers had been made part of the business records of the contractor and were identified at trial by him in conformity with the Uniform Business Records Act (See opinion of the Trial Court at page 32 of the Petition). In any event, the question is moot, for, although the Jury found the Petitioner guilty of accepting these gifts, the Trial Court granted a Motion in Arrest of Judgment and discharged him because the benefits were conferred out of the jurisdiction of the Pennsylvania Court, i.e., the benefits were conferred and enjoyed in New York.

Commonwealth Exhibit C-11a is a letter addressed to the witness, attention Mr. Varani, from the "outside engineers", recommending that the original bid on Contract 729 be modified. On the letter is a note in the handwriting of the Petitioner (N. T. 103) agreeing "to throw out" the bid of another contractor and re-advertise the contract—thereby giving Travis a chance to bid on the contract.

Commonwealth Exhibit C-11d is a letter from the outside engineers to the Department of Public Property stating that the outside inspector was taken off the job due to "lack of funds" (N. T. 132). The Commissioner testified that he had seen the letter in the files of his Department although he did not know when (N. T. 131) and then went on to testify as to the lack of funds that required a request for additional appropriations of City Council (N. T. 133 to 137).

4. *It is argued that to set aside verdicts of guilty as to some indictments and to permit others to stand constitutes a denial of "equal protection of the law".* No authority is given for this proposition.

Petitioner was accused of accepting nine gifts; for each gift there was one indictment charging extortion and another indictment charging bribery. The jury found him not guilty of receiving two gifts (substantial cash payments); the trial Court granted Motions in Arrest of Judgment as to four gifts enjoyed out of the jurisdiction; the Superior Court held that there was not present in the case the coercion essential to extortion, and discharged him on the three remaining extortion indictments.

There had been four conspiracy bills, on appeal it was held that one was sufficient; Petitioner was discharged on three conspiracy indictments on the ground that they were duplicitous. A demurrer was sustained to a charge of making false documents. Judgments of conviction are undisturbed on three indictments charging obtaining property by false pretences, three charging bribery and one charging conspiracy.

There was no item of evidence admitted in support of the indictments as to which Petitioner was discharged which was not also admissible in support of the indictments of which he stands convicted (for example, evidence of entertainment in New York proved a relationship conducive to favoritism in awarding and supervising contracts).

5. "*The extensive and adverse publicity by the news media made a fair trial impossible and resulted in violation of the petitioner's rights under the Due Process Clause of the Fourteenth Amendment.*" (Petition page 14.)

Each time the question was raised during the trial the Court observed and evaluated the extent and nature of the "coverage" complained of and found nothing which could, deprive Petitioner of a fair trial. Neither in the petition nor at any stage below, is there one quotation from any newspaper or broadcast transcript to support the statement that he was prejudiced by news reports.

6. ". . . *the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution* (citation)." (Petition page 14.)

Petitioner, prior to trial, moved in open court for the right to inspect the books and records of the contractor and of all of the companies with which he was associated; the Court ruled that the wholesale impounding of these business records was unnecessary to the defense.

Petitioner had the right to subpoena whatever records he wanted; the Court demonstrated that he could take as much time as was necessary to examine whatever documents were produced at trial (for example, at page 150 of the notes of testimony petitioner declined the offer of the Court to take an extended recess to examine documents produced by the Commonwealth). Petitioner was not denied his right to have papers produced in response to subpoena nor of his right to make adequate inspection of any papers that were produced.

CONCLUSION

There is no reason why appellant should be granted a new trial. His guilt was established in a fair and impartial trial conducted in conformity with the requirements of due process of law. Wherefore, the Commonwealth respectfully requests this Honorable Court to deny the prayer of the Petition.

Respectfully submitted,

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